

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CHARLEY D. ALLEY,

Plaintiff,

v.

GENE CAIN, et al.,

Defendants.

)
)
)
)
)
)
)

Case No. CIV-13-737-W

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. United States District Judge Lee R. West has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). By an order dated July 19, 2013, the undersigned found that the Plaintiff's Motion to Proceed *In Forma Pauperis*, **ECF No. 2**, was missing financial information and a signature of an authorized officer of penal institution and a certified copy of Plaintiff's institutional account statement for the six-month period immediately preceding this filing. The Order directed Plaintiff to cure these deficiencies on or before August 8, 2013. ECF No. 5.

A review of the court file reveals that more than 50 days have passed without Plaintiff curing the deficiencies, showing good cause for his failure to do so, or requesting an extension of time to comply with the Court's order. In fact, Plaintiff has not responded to the Court's order in any way. The undersigned finds that Plaintiff's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161

n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

RECOMMENDATION

It is therefore recommended that Plaintiff's Motion to Appear *In Forma Pauperis*, **ECF No. 2**, be **DENIED**. It is further recommended that this action be **DISMISSED without prejudice** to refiling. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **October 4, 2013**, in accordance with 28 U.S.C. § 636 and Fed.R.Civ.P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED on September 17, 2013.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE